McDONALD *v.* OREGON RAILROAD AND NAVIGATION COMPANY.

ERROR TO THE SUPREME COURT OF THE STATE OF OREGON.

No. 463. Motion to dismiss submitted May 4, 1914.—Decided May 25, 1914.

The due process clause of the Fourteenth Amendment does not control methods of state procedure or give jurisdiction to this court to review mere errors of law alleged to have been committed by a state court in the performance of its duties and within the scope of its authority concerning matters non-Federal in character.

It is the lack of jurisdiction in the sense of fundamental absence of any and all right to take cognizance of the cause that amounts to deprivation of property without due process of law and gives this court power to review the judgment of the state court under § 237, Judicial Code, not the wrongful exercise of jurisdiction in the sense of duty to

adopted the legal principles which the trial court had applied, that is, the court likewise declared the clause in the deed to be a condition and decided that the failure of the railroad to comply with its terms had forfeited all its right and title in and to the land. But nevertheless the decree was not affirmed. After expounding its reasons for fully agreeing with the legal conclusions of the trial court, it was said: "So far, then, we have found that defendants were entitled to a forfeiture and that the land has reverted, but we now recur to the remedy. The situation is anomalous. Plaintiff has constructed its road and has it in operation, thereby performing an important public function for a large and increasing population. . . . It is to the interest of the public that it should continue to do so and that the defendants should not be allowed to acquire a portion of its roadbed to the detriment of public travel. The condemnation of land for railway purposes is usually the function of a court of law, but there are in this case such special circumstances as to authorize this court to end the whole litigation at once and forever. The pleadings show that this land is needed for the purpose of a railway, and the evidence shows that the railway is actually there on the ground. Defendants come into court, submit themselves to the jurisdiction of equity and ask affirmative relief. Much of the testimony was devoted to showing the value of the land taken, the effect of the taking on the remainder of the tract and all those things which are usually shown in an action to condemn for a railroad right-of-way. Having jurisdiction of this case we have concluded to assume it for all purposes and to so modify the decree that plaintiff shall take title to the land described in this strip upon the paying to defendants the damage occasioned by such taking, which we assess at $700, and the costs and disbursements of this suit." Upon the entry of a decree conformably to these views, the defendants asked that the decree be

modified so as to confine it to a recognition of their title and to exclude all its provisions conferring upon the Railroad Company the right to take the property on paying the adjudged sum. This application was supported by an elaborate argument challenging the right of the court under the state law to exert the power which it had exerted. In none, however, of the elaborate arguments pressed to sustain the motion to modify was there any reference whatever to any supposed denial by the state court of rights guaranteed by the Constitution of the United States, and for that reason and because it is insisted that on the face of the record it is manifest no Federal question is presented, a motion to dismiss has been made which we come to consider.

All the contentions as to Federal rights rest upon the assumption that the court below denied due process of law when it entered the decree complained of and this is based upon the conception that the court exceeded its jurisdiction and misconceived or wrongfully interpreted the evidence and thereby in effect while recognizing the title of the plaintiffs in error, virtually deprived them of the right conferred by the state law of having a common law trial for the purpose of determining the questions which would require to be decided in case of the exercise by the Railroad Company of the right of eminent domain including of course the fixing of compensation to be paid for the taking and the damages incident thereto. Leaving aside for the moment the question of the jurisdiction of the court in the fundamental sense, that is, *ratione materiæ*, it is manifest that the want of foundation for all the propositions insisted upon is quite clear, since after all, taking the aspect most favorable for the plaintiffs in error, the propositions but assert that the court below in deciding the case, committed error as to matters involving no Federal question because purely of state cognizance. It is elementary and needs no citation of authority to show that

the due process clause of the Fourteenth Amendment does not control methods of state procedure or give jurisdiction to this court to review mere errors of law alleged to have been committed by a state court in the performance of its duties within the scope of its authority concerning matters non-Federal in character. So far as the contentions address themselves to the subject-matter of jurisdiction it is clear that they do not deny jurisdiction in the sense of the fundamental absence of any and all right to take cognizance of the cause, but are confined to jurisdiction in the sense of the duty to rightfully decide subjects to which judicial power extends. In this aspect the error of all the contentions is within the principle announced in *Castillo* v. *McConnico*, 168 U. S. 674.

But aside from the reasons just stated the absolute want of merit in the Federal right asserted becomes doubly apparent when it is observed that the plaintiffs in error, who were defendants in the trial court did not simply stand upon their rights as defendants, but went further and sought affirmative relief at its hands and could only be now heard to deny all power by being permitted to deny the right to exert the very jurisdiction which they invoked.

Dismissed for want of jurisdiction.